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SIPDIS

SENSITIVE
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SUBJECT: JUSTICE MINISTER DEFENDS DEFINITION OF TERRORISM

REF: ANKARA 2206

This is an action request. See para 4.

11. (SBU) Summary: In response to a letter from the Ambassador to Justice Minister Cicek expressing concern over the retention of Turkey's narrow definition of terrorism in draft anti-terror legislation (ref), a Justice Ministry letter argues that provisions in current Turkish law allows Turkey to meet its international commitments to cooperate in fighting terrorism. Embassy requests Washington advise us on how to rebut these arguments with respect to how the unchanged definition affects Turkey's ability to comply with international obligations to cooperate in fighting terrorism, including financing of terrorism. End Summary.

Ambassador Writes Justice Minister

12. (SBU) In his April 28 letter to Minister Cicek, the Ambassador expressed concern about the retention of the current Turkey-specific definition of terrorism in the draft anti-terrorism law the government proposed to parliament in mid-April. Particularly in view of the fact that Turkish government officials had previously told us that the the current definition was not adequate, the Ambassador's letter expressed the concern that Turkish law would continue to not define as crimes terrorism acts that did not directly target Turkish interests, as well as crimes predicated on such acts -- such as financing terrorist activity. The Ambassador expressed the hope that the new legislation would include a definition that would facilitate international cooperation and specifically urged a broadening of the definition beyond attacks against the Turkish state and Turkish citizens. The Ambassador also raised the issue with MFA Under Secretary Ali Tuygan on May 5 and with the head and members of Parliament's Foreign Affairs Commission on May 18. Neither had a substantive response.

Justice Minister Defends Definition

13. (SBU) In a May 4 one-on-one lunch, the Ambassador discussed the issue directly with Cicek. The Minister reiterated the importance of strong international cooperation against terrorism, but said current law addressed the concerns raised in the Ambassador's letter. Claiming that terrorism cannot be fought through a single law, Cicek said that other laws relating to terrorism enable Turkey to cooperate internationally. He noted that Turkey has signed twelve international treaties relating to counter-terrorism and that Article 90 of the Turkish Constitution assures that

international treaties supersede domestic law. Moreover, he said Article 13 of the revised Turkish Criminal Code enacted in June 2005 enables terrorist crimes committed abroad to be prosecuted and tried in Turkey and provides for extradition of terrorists.

Action Request

¶4. (SBU) ACTION REQUEST: Cicek also reiterated the Government's justification for not changing the definition: that there is no international consensus on a definition of terrorism. Given the lack of such a consensus, Turkey opted to list offenses that would be considered terrorism. In a follow-up to that conversation, the Ambassador received on May 16 a letter from MOJ Director for International Relations Aykut Kilic laying out Cicek's arguments in writing. Embassy requests that Washington legal experts review the letter and the draft legislation (emailed to EUR/SE) and advise on how best to counter these arguments. In other words, to what extent does the USG consider Turkey's legal framework to be in compliance with Turkey's international commitments under UN counter-terrorism conventions, including FATF Special Recommendations on terrorism finance. The Ambassador would be prepared to reply to the MOJ letter if we have sufficiently compelling arguments.

Letter from Justice Ministry

¶5. (SBU) On May 16, Embassy received the following letter signed by Justice Ministry Director General for International Law and Foreign Relations Judge Aykut Kilic.

Begin Text:

Mr. Ambassador,

I thank you for your letter of 28 April 2006, addressed to H.E. Mr. Cemil Cicek, Minister of Justice, showing your sensitivity to combat terrorism. Minister Cicek shared your sensitivity towards this scourge and instructed me to look through the points you raised.

In your letter, it seems that you have certain hesitations that the new anti-terrorism law criminalizes terrorist attacks only if they are directed to the Turkish State or Turkish nationals and if they are committed in Turkey. Your hesitation probably stems from the opinion that the "Anti-Terrorism Law" is the only legislation in Turkey in the field to combat terrorism.

As is known, Turkey gives her unwavering support to all efforts on combating terrorism and with this understanding, has been one of the first countries which have ratified and has become party to all 12 United Nations Conventions and Protocols concerning terrorism as well as the Council of Europe Convention on Suppression of Terrorism. However, the said Conventions do not give any definition for terrorism; rather they specify the offences which are deemed as terrorist acts. As it is the case for the Anti-Terrorism Law, these Conventions have become part of domestic legislation in accordance with Article 90 of the Constitution providing that "International agreements duly put into effect bear the force of law." Consequently, acts mentioned in these Conventions are also included in the Turkish legislation.

Article 8 of the Turkish Criminal Code (TCC), which came into effect on 1 June 2005, requires an investigation or prosecution be carried out for the terrorist activities committed in Turkey. If a terrorist act is committed abroad by a Turkish citizen and the perpetrator is located in Turkey, an investigation shall be carried out in Turkey pursuant to Articles 12 and 13 of the TCC. Furthermore, if a terrorist act is committed abroad by foreign nationalities,

the person located in Turkey shall be extradited in compliance with the provisions of multilateral or bilateral international agreements of which Turkey is a party and in their absence, in the context of "principle of reciprocity." A trial can be realized in accordance with the principle of "prosecute or extradite" as well as Article 13 of the TCC in cases where extradition is not possible.

Having in mind that all the countries are obliged to take all necessary measures to prevent and suppress terrorism, Turkey strongly believes the necessity for an effective cooperation at the national, regional and international level in the fight against terrorism. In this vein, Turkey has been taking necessary measures of security, economic and social as well as legal nature in order to foestall terrorist activities, eliminate its resources and prevent its damages. In elaborating the relevant legislation, Turkey, therefore, takes into account not only the provisions of international conventions but also the most recent developments in the comparative law.

As unfortunate terrorist attacks toward the United States of America on 11 September 2001 and the following bombings in Madrid, Istanbul and London have shown us, terrorism is a common scourge which entails an intense and close international cooperation.

Emphasizing that the perpetrators of terrorist acts, no matter wherever they take place, cannot be released without being punished or prosecuted, I would like to thank you, Mr. Ambassador, once again for the sensitivity you have shown in this matter. I remain,

End Text.

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